

COMMITTEE ON COMMUNITY IMPROVEMENT

January 11, 2005

6:30 PM

Chairman O'Neil called the meeting to order.

The Clerk called the roll.

Present: Aldermen O'Neil, Shea, Smith, Lopez

Absent: Alderman Garrity

Messrs.: F. Thomas, N. Hebert, R. MacKenzie, L. LaFreniere, T. Arnold,
S. Maranto

Chairman O'Neil addressed Item 3 of the agenda:

Amending resolution and budget authorization transferring funds in the amount of \$96,738.09 for FY2005 CIP 611305 MNHS Downpayment & Closing Cost Assistance.

On motion of Alderman Lopez, duly seconded by Alderman Shea it was voted to approve the amending resolution and budget authorization.

Chairman O'Neil addressed Item 4 of the agenda:

Communication from Dayton and Concepcion Spaulding regarding drainage issues in the Pasture Drive development area.

Frank Thomas, Public Works Director, stated after the last CIP meeting, my staff met with the gentleman from Pasture Drive who requested that we take a look at filling in his backyard. If you remember correctly there were four or five homes on Pasture Drive and under the original subdivision a storm drainage treatment swale was built in their backyard. A request was made to eliminate this treatment swale. They received approval from the state. We allocated funds and relocated the drainage down the street so no roadway drainage was dumped into the backyards. After that three of the four backyards were filled without any attention paid to drainage. The gentleman who requested the filling of his backyard was upgrading. We did go out as I mentioned. It would be possible to get a small bobcat by his house, however in looking at the area we felt that if we now brought in some fill behind this gentleman's house that we would just move the water

problem up one lot and we felt that if we did get involved that we may be opening ourselves up for a liability in regards to going in and regarding all of the backyards. Based on our inspection of the area, we wrote a letter to the City Solicitor's Office summarizing our concerns and we are awaiting a response back. My offhand guess would be that they would advise us to stay away from this.

Chairman O'Neil asked Mr. Arnold are you aware of that letter.

Deputy Solicitor Arnold answered I am not and I apologize.

Alderman Shea moved to table this item until we get information from the Solicitor's Office. Alderman Smith duly seconded the motion. Chairman Thibault called for a vote. There being none opposed, the motion carried.

Chairman O'Neil addressed Item 5 of the agenda:

Proposed ROW at 2989 Brown Avenue submitted by Norm Hebert.

Mr. Thomas stated this is somewhat of a complicated request that goes back some time so I am going to try to summarize it before I turn it back to you. In 1985, the Heberts gave the City a 26' x 28' square parcel of land on the northside of Cohas Brook abutting the easterly side of the Brown Avenue bridge over Cohas Brook. This parcel, along with others, were required to facilitate the rehabilitation of the bridge. The granting of this parcel reduced the Hebert's frontage along Brown Avenue to 129'. In 1987 this lot was subdivided into two lots having frontages of 100' and 29'. The housing lot at 2985 Brown Avenue having the 100' frontage was sold and the lot with the 29' of frontage was retained by the Heberts. Mr. Hebert claims that in 1985 he was promised that if the land was donated to the City it would become part of the Brown Avenue right-of-way so that the donation of this land would not adversely impact his frontage. As a result, he is now requesting that the City parcel be accepted by the Board of Mayor and Aldermen as part of the Brown Avenue right-of-way by means of the road hearing process. This request originally was sent to the Lands and Buildings Committee because it is a City parcel but after review by the Lands and Buildings Committee and with advice from us it has come back to this Committee for potential consideration under the road hearing process.

Alderman Lopez stated in the road hearing process...I am sure there are going to be questions here tonight but if we went out for a road hearing and we had all of these questions why should we do this...is this common.

Mr. Thomas responded this is not that common. Typically we are dealing with odd sections of roadway, not just small sections. In most cases we have had

discontinuances of small portions of right-of-way. What comes to mind is over by Sully's we discontinued a section of that right-of-way in order to build that retaining wall to support the parking lot. This is a somewhat similar request.

Alderman Lopez asked would this be beneficial to the City.

Mr. Thomas answered I don't see where it would be a benefit to the City. We own the property now. We own the property in deed. To give it the classification as part of the right-of-way I don't see where it adds anything to it because right now the parcel as I mentioned is owned by the City and was acquired because of the bridge windwalls and if we ever had to get in there to do repairs on the bridge we could access it because it is our property. So the request would be just to change the status to be part of the Brown Avenue right-of-way.

Chairman O'Neil asked so Frank in your opinion there is no benefit to the City.

Mr. Thomas answered I don't see that there is any benefit to the City by changing the designation. As I mentioned, the City owns the land now. We own it by deed. We have full access to change it to a right-of-way. I don't see where it accomplishes any purpose that is of benefit to the City.

Chairman O'Neil asked and how deep is that small section of land.

Mr. Thomas answered it goes back 26'.

Chairman O'Neil asked and that is what we would actually be accepting is making a 26' road more or less by making it a right-of-way.

Mr. Thomas responded we would be widening the right-of-way in that location by 26' and then there are two parcels – there is Mr. Hebert's parcel that we acquired from him and there is another parcel that abuts that.

Chairman Thibault called Mr. Norm Hebert forward stating that he do his best to keep his comments short.

Norm Hebert stated I have some handouts for the Committee. The reason for the request tonight is that I actually ask this Committee to right a wrong that has actually been festering for 20 years. If you take a look at the second handout, there is going to be an affidavit of Steve White. Basically if you get a chance to just read that one item it will basically crystalize everything that has happened here. If you look at the plan that you have basically what you see here is the yellow line denotes the Old Brown Avenue right-of-way. This is my piece of property right up in here. In 1985 as Mr. White's affidavit actually shows, the

City came to Mr. White on behalf of the Highway Department asking for a donation of this little corner of property 28' x 26' along Brown Avenue. I had told Mr. White at that time in 1985 that I was contemplating subdividing the lot and I had no problem being a good citizen and helping out the City but what I didn't want to do was give away my frontage on Brown Avenue. Well what he did is he took the plan back and actually redrew the plan and I have this pink highlighted on both sides. You can see down here it says existing right-of-way where the yellow line is and it says proposed right-of-way, which is this crosshatched area right in here. So it was explained to me that not only would I have the remaining 29' that I had before but I would also be picking up 26' and 28' so my total frontage would actually be going from 56 1/2', which I had, to somewhere around the idea of 85'. The other thing I would like you to take a look at is the zoning review for the subdivision, which is also in the packet that I handed to you. The zoning review is dated 11/28/1986 and if you take a look at the subdivision review down at the bottom it is going to show the proposed Lot A and the proposed Lot B. As you can see here the only variance or the only thing that was non-conforming at the time that Lot B was subdivided was this 29' of frontage, which wasn't there according to the subdivision plan. So I had 56 1/2' of frontage. I made this donation to the City gratis just trying to be a good citizen and when the subdivision was actually done I had no idea that it was actually done as a non-conforming lot. I had thought that it was a zero variance lot and you can see from the subdivision review that the only thing that was non-conforming was the right-of-way of 29' as opposed to 56 1/2'. You can also see that I needed 50' of frontage. I had 56 1/2' and by giving this piece of property to the City and it was actually promised by Mr. White and Mr. Kozowicz who is long since deceased that I wasn't going to be losing any frontage. So what we are asking for here today is that you basically do what should have been done a long time ago, which is to accept the new road frontage as was promised in the City Highway Department's plan per the affidavit of Mr. White and per my testimony and to do it retroactively such that this subdivision review is not now going to show anything non-conforming with respect to Lot B because there would have been 56 1/2' of frontage if not 85' of frontage based upon my donation to the City. I don't think that it is probably a good idea for the City to get the reputation for making promises to people and reneging on the promises and then going before the Zoning Board and being told that you have created a self-imposed hardship by making a donation to the City.

Alderman Shea asked do you have something in writing concerning all of this that you are discussing.

Mr. Hebert answered yes Sir. I have an affidavit from Steve White and a deposition of Steve White. I have a Highway Department plan dated June 20, 1985. You will also notice my deed to the City, which is included in that packet

dated June 26, 1985. I had this plan from the City prior to the time that I made the contribution to the City.

Alderman Shea asked and they signed off on it right.

Mr. Hebert answered yes Sir.

Alderman Lopez stated there is quite a bit of material here and some legal interpretation needed. I think in my opinion if you would accept a motion to submit this documentation to the City Solicitor for a legal opinion because there is so much information like this affidavit. It is not signed. At least my copy isn't. I think even at the late hour in getting all of these documents I would be comfortable with a legal opinion.

Chairman O'Neil asked Mr. Arnold do you have any opinion right now. What I don't want to do is allow this to sit around and sit around and sit around. It got passed from another Committee to this Committee.

Deputy Solicitor Arnold stated it is my understanding that Mr. Thomas over at the Highway Department has not been able to define any written documentation within his department of any such representations. I would note that even if a representation was made, Mr. White did not have authority to bind the Board of Mayor and Aldermen. To lay out a road or to accept property takes action by the Board. It did then and it does now and Mr. White could not bind the Board with his representation if it was made.

Mr. Hebert stated I understand that, Sir, and that is why we are before your Board today. We went to Superior Court on this and Superior Court said that Mr. White was not able to bind the City to that representation and that is why we are here. The only people who can fix this is the Board of Mayor and Aldermen or the CIP Committee if that is the designee. What we are asking here is just for an injustice to be righted. How would you feel if the City came to you and you were in my situation asking for donations of property and I...you know, this would have been a zero variance lot if a misrepresentation hadn't been made to me. Again, it wasn't just Mr. White. I think that it is clear that this is the Highway Department's plan that was shown to me or given to me prior to the time that I signed the deed to the City. I have been nothing but a good citizen here. Mr. Thomas will probably tell you that I have given multiple easements, not only these but several other easements over the years. I did this for nothing to try to help the City and now I am being told that what I have done is created a self-imposed hardship and that is very hard to swallow and I ask yourself to have some compassion and put yourself in my place.

Alderman Lopez asked is this an area...Mr. Thomas do we have a monument out there for a former Alderman.

Mr. Thomas answered the new location of Alderman Crotty's monument is in that area that we just talked about that is the subject of discussion tonight. Previously it was on the site and it got vandalized.

Mr. Hebert stated I have some pictures for the Committee. There is a full curb cut there. There is a 30' driveway.

Alderman DeVries stated I guess my questions would probably be more directed towards Planning and Mr. MacKenzie and I don't know if he is prepared to address it tonight but at some point in time I think it would be pertinent to look at this parcel of land and see...even if this was granted with Shoreline Protection and other easements that exist on this property is this changing anything to make the property more of a buildable lot for Mr. Hebert or is this just an exercise in formality that really doesn't change anything regarding his ability to use his parcel?

Robert MacKenzie, Planning Director, stated I think the intent is to use this lot as a buildable lot. I would note that it is my recollection and I just briefly spoke with the Building Department that there was a larger lot in the early 1980's. The previous owner, I think his father, came in for a subdivision and subdivided off a house out of this lot. At that time, though, it was recognized that the remaining lot near the dam was not a buildable lot. I would like to verify that. It is my recollection that that is true and I did confirm that with the Building Department. We together could perhaps provide the Committee with a more detailed report as to whether it would become a buildable lot, what happened with this subdivision and what would be the impact of the Shoreline Protection Act on this particular site.

Alderman DeVries stated I think there is another pertinent piece to that if you would, Mr. MacKenzie, because I know that there are several permanent easements that sit on the property as well that I think might need to be defined for this Committee if they are going in that direction. I know that Mr. Hebert and I have spoken in the past very generally and he I think in one of my first conversations with him my interest in this property is probably contrary to his because I would love to see this property purchased from Mr. Hebert for the purpose of a park or something to further public use and maybe further monument that exists there but it is very difficult because he has invested a lot into this property and the assessed or appraised values really don't match and I am stuck to per City Charter the procurement code so that effort hasn't gone forward and I am sure it is very frustrating for the parties.

Alderman Lopez stated I would like to suggest that Mr. MacKenzie, Mr. LaFreniere, Mr. Thomas and the City Solicitor give us a firm recommendation after they review all necessary documents.

Chairman Thibault stated Frank has given us a recommendation. Tom has given us his legal opinion.

Deputy Solicitor Arnold responded I will give you a recommendation also. This has already been to Superior Court. They issued a ruling against Mr. Hebert.

Alderman Smith stated I am looking at a zoning review that was done in 1986 and Max Sink was the Plan Examiner and it went from Plan A to Plan B and I guess the existing one was 36,000 or something and it was reduced and they needed approval for the subdivision. That is the only thing that I can make of the whole deal that Max is still involved with it and I have to agree with Frank. I think we should probably go to a road hearing and have all of the answers before us before we go out on that road hearing.

Chairman O'Neil called Leon LaFreniere forward.

Leon LaFreniere, Building Commissioner, stated I would just echo the Solicitor's comments that this matter has been thoroughly litigated and we have...there was a ruling in favor of the position of the City on this. This is considered an unbuildable lot both due to representations made at the time of the original variance as well as encumbrances that exist on this lot as well as non-compliances that exist with regard to the parcel that this was subdivided off of. Representations were made to that effect. I think that there may be a misunderstanding on Mr. Hebert's part with regard to how frontage is measured. Even if this action were to take place, the City Zoning Ordinance does not measure frontage in the manner that he has represented to you this evening. Frontage is only measured on a single property line, not on three property lines, which would be necessitated by the methodology that Mr. Hebert has indicated.

Mr. Hebert stated I have several things. First of all, the reference that Mr. LaFreniere was referencing didn't come into effect until 2001 regarding linear frontage or whatever...I think that is what he was talking about and what we are seeing here is this piece of property has been conveyed to the City and if the City owns this piece of property then I would at least have the 56 1/2' of frontage that I had when I made this donation to the City. I wouldn't have the extra 26' of frontage but at least I would have the original 56 1/2'. With respect to representations about being non-buildable, this property when it was subdivided...you see the sub-division review is actually or basically this plan was

supposed to be reported in the Registry of Deeds and it never was. To complicate matters worse, the zoning review was lost for 17 years. As far as misrepresentation or representations that I made that the property would not be buildable, that was with respect to only two things. In 1987 when I gave the property to the City, the Brown Avenue bridge was in the process of being reconstructed but the Pine Island Pond Dam construction was in the planning phases. The reason that I stipulated that I would not use this property for residential purposes was because of Mr. Thomas's representation or Mr. Thomas's request that they were going to have to build a berm back there on that back lot and because the City wanted to build a berm you couldn't put a house on where the berm was and that basically made it non-buildable for residential purposes. The bottom line is basically this. If the property was a buildable lot at the time in 1987 when the lot was subdivided, I represented to the City that I would not use the property for residential purposes if they zoned it for hydropower, which is what I was asking them to do because there were concerns about a dual use of the property and it being used for both hydropower purposes and residential purposes. What I am telling the Committee is I agreed not to use this property for residential purposes number one because Mr. Thomas of the Highway Department wanted a further easement on the back of the property for the berm that we talked about and because there was a problem in the City with respect to having a dual use of the property. What I am saying is there was a zero variance lot when it was built and I agreed not to use it for residential purposes if the City zoned it for hydro. What I am asking is for it to zone it back for residential purposes seeing where it should have been a zero variance lot when it was created. Any representations...the last thing I guess with regard to the Superior Court action is all the Superior Court said was that the City did not need to be bound by the representations of Mr. White and that the only person that could make that right-of-way determination was the Mayor and Aldermen or their representatives and that is why I am here. With respect to Mr. Thomas's representation to the Committee, I would ask to bring your attention to the very last paragraph of Mr. Thomas's letter dated September 23 that says the request should go through the CIP Committee with a recommendation of accepting the dedication through the road hearing process. That representation has been made here in writing and maybe if Mr. Thomas is changing that at this point we will have to get the...

Mr. Thomas interjected no I am not changing it. What I was referring to is if the Board of Mayor and Aldermen or the CIP Committee wanted to grant Mr. Hebert's request it would have to go through the road hearing process with a favorable action to accept the right-of-way.

Alderman DeVries stated I have a question of Mr. Thomas. Did I hear you indicate in your testimony that you had some concerns with the loss of this right-

of-way maintaining the dam in that area or gaining access to properly maintain that dam?

Mr. Thomas responded no. What was asked of me was regarding this parcel that abuts the roadway whether the City picks up any public benefit by accepting it. I said basically no. We own the property and we have access to that property and whatnot. You are raising other issues regarding the other permanent easements that are on this site. There are other permanent easements. There are permanent easements that run parallel to the Cohas Brook as it outlets from the dam. There is a permanent easement that runs in a north/south direction off of the spillway, which was labeled the dike when it was constructed. The parcel does have permanent easements attached to it in addition to what was donated or given to the City as the parcel abutting the bridge.

Chairman O'Neil stated I would like to bring some closure to this one way or the other. I would like to give my opinion. Although I have some sympathy for Mr. Hebert with this and I know, he and I spoke earlier and I know he is working in Connecticut and I don't want to see this drag on where he has to take time to come up here when the inevitable is probably, in my opinion, going to be that we are not going to recommend this. This is my opinion. I have heard enough from the City staff on this issue that I know where I am going to go. I don't want this to drag out. Mr. Hebert is going to have to do after this what he is going to have to do in my opinion.

Alderman Shea stated my point is does Mr. Hebert have to come back, if he were to have to come back from Connecticut if we get what Alderman Lopez has indicated...I realize that we have heard from Frank Thomas. I guess we have heard from Leon LaFreniere and Bob MacKenzie, as well as the City Solicitor's Office but in order for...I believe in the event that Mr. Hebert wants to pursue this I think a written type of legal opinion would support whatever decision we would tend to make when we meet the next time. That is my personal opinion. If it goes against Mr. Hebert, he has to do whatever he has to do in that regard. I would support...I know you didn't accept the motion from Alderman Lopez but if he were to make it again to have all of the different parties in this particular matter meet together and give us a written opinion so that we could then make our judgement predicated upon that and Mr. Hebert then could be sent the results of this. I think that is only fair to the person who is coming before us this evening.

Chairman O'Neil asked is that a motion.

Alderman Shea answered that would be a motion.

Alderman Lopez stated I think when I made the motion and then the City Solicitor weighed in and the Building Department Director weighed in there seems to be some misunderstandings on somebody's part. I am not too sure unless Mr. MacKenzie in his remarks feels it is absolutely necessary to review that whole area as the Planning Director...Mr. MacKenzie do you still feel that you want to go through that entire process?

Mr. MacKenzie responded the only reason I would want to is I don't know the most recent development. I do remember the case when it was subdivided in the late 1980's. I do remember some of the representations made. I was not as familiar with the fact that it had gone to court and it had gone to the Building Department. I am not requesting specifically that the Board table this on my account because I just want to get into a learning mode and make sure that we understood whether it is a buildable lot or a non-buildable lot and what the issues are.

Mr. Hebert stated or if it is a grandfathered lot I would add.

Alderman Lopez stated I think the problem that I have is that if we go to a road hearing we are going to have the same type of questions and I agree with the Chairman that it might be an exercise that we are putting people through for what I don't know. I am willing to concede that if we can have a joint recommendation from staff I would be more comfortable or else I can't vote to do one or the other tonight.

Chairman O'Neil stated before I accept Alderman Shea's motion, Alderman Forest had a question.

Alderman Forest stated I have a question and it is mostly for Tom Arnold. Alderman Shea was asking for a written opinion. I believe that the courts have given us an opinion and I think Deputy Solicitor Arnold can answer that question.

Deputy Solicitor Arnold responded as I said this issue of the zoning variance was appealed to Superior Court. Our office defended that action. Superior Court issued an order denying Mr. Hebert's appeal.

Mr. Hebert replied but clarifying that what they did is they said that the City did not need to be bound by the representations of their agents being Mr. White or the Highway Department and the only person who could accept that frontage legally was this Board so now I am doing what the court suggested. I am coming back before the Board to try to get you to accept the right-of-way. That was the extent of the court's ruling.

Chairman O'Neil asked is everybody clear on that. I have my personal opinion where I believe I will be going whether it is tonight or in the future on this. I don't want to drag Mr. Hebert through this whole thing but if it is the wish of the Committee to get a written opinion from staff I would entertain that motion from Alderman Shea.

Alderman Shea stated I am not suggesting in my motion that we have a road hearing. I am not saying that. All I am saying is that in order for us to be consistent we should get from the people involved in this process their written opinion to be presented to us so that we can make a decision predicated upon everything that has been presented to us.

Alderman Lopez duly seconded the motion. Chairman O'Neil called for a vote. The motion failed with Aldermen O'Neil and Smith duly recorded in opposition.

Alderman Lopez moved to receive and file. Alderman Shea duly seconded the motion. Chairman O'Neil called for a vote. There being none opposed, the motion carried.

Chairman O'Neil addressed Item 6 of the agenda:

Petition for acceptance of Gobel Street submitted by Burd Engineering on behalf of Violet Gelinas.

Mr. Thomas stated Gobel Street is not a public street for a few different reasons. Number one, Gobel Street was originally dedicated as Alton Street on a plan of Shoreline Acres dated 1916 and filed March 15, 1923. The City did not accept the dedication within 20 years and, therefore, the dedication expired according to RSA 231:51. No record was found of a street layout over the platted street. While the City has recently maintained the street, it does not appear that this was done for a period of 20 years before 1968, which would have given it status through prescriptive use. Therefore it does not appear that Gobel Street meets the test for a public way by prescriptive use as I mentioned. So the street is not accepted. There are two options available. One is through a layout petition that could be done by the property owner. This would be somewhat similar to the way that Mission Avenue was accepted via layout petition and by rights there would have to be title searches done and waiver of damages from people who have mortgages on the property or the street could be dedicated. That is the way a normal subdivision acquires public status. All of the abutters would go through the dedication process. The bottom line, I believe, is that the request or the information submitted by Burd Engineering did not meet the obligation for following the procedure for having the street accepted by the City.

Alderman Shea asked if you were to present these two options to the petitioner would that be something that made sense or how would you say it.

Mr. Thomas answered our surveyor at the Highway Department, Marty Miccio, who is a licensed surveyor I believe has been in contact with this firm, Burd Engineering. I will gladly have Marty Miccio contact them again tomorrow to relay this information and if they have any questions...well quite frankly Marty is knowledgeable on the way to proceed with that.

Alderman Shea moved on the Highway Department's recommendation.

Alderman Lopez stated I have had discussions with Mr. Thomas because I was involved with another Alderman on Mission Avenue and I have noticed and Alderman DeVries is on the Planning Board and maybe she can speak to this but they have been giving – the Zoning Board and the Planning Board have been giving people permission to build houses and stuff like that providing that we get the street on the rolls so to speak. The problem I have is that if we do it for one why don't we do it for all? I think there is some change in law going on up at the state now in reference to making these streets dedicated to the City or something like that. Do you know anything about that, Frank?

Mr. Thomas responded Tom Arnold could probably explain it better but from what I understand there is a fairly recent law that passed and from what I gather the ZBA has been referring things to the Board of Mayor and Aldermen.

Deputy Solicitor Arnold stated I can't add much. Yes there is a recent statute. I haven't reviewed it recently. This Board dealt with it within the past three or four months and unfortunately I don't remember the name of the street at this point. There is a statutory procedure that I believe would give this Board jurisdiction without having a statute hearing.

Alderman Lopez stated I am just wondering have we...we have quite a few streets in Manchester that have not been laid out but were taken care of. Is that correct?

Mr. Thomas responded that is correct but again this is a parcel that is being subdivided into three parcels obviously for monetary gain. There are ways of doing it as I mentioned through the dedication process or the layout petition process. Quite frankly I think in this particular case it is the price of doing business.

Alderman Lopez asked is the dedication process faster.

Mr. Thomas answered it depends. If there is one property owner then the dedication process may be quicker. Typically a new subdivision and that is the way the streets are accepted through the dedication process, have that one owner.

Alderman Lopez asked if we do one though and there are five or six out there in the same category are they all going to come before us.

Mr. Thomas answered yes. I don't think the Board arbitrarily wants to start accepting streets without rhyme or reason. Again there are ways of doing it. Again with the layout petition or the dedication process. There are requirements of title searches and requirements for waivers of damages. There are methods out there but I think what is being asked is a shortcut of what is on the books.

Chairman O'Neil stated Frank you said this is similar to Mission Avenue. The process would be similar but this isn't a similar situation right?

Mr. Thomas responded right. This isn't one where there have been multiple variances granted. In the case of Mission Avenue I don't know I think there were a dozen houses allowed to be built on an unaccepted street.

Alderman DeVries stated certainly I have had conversation with these property owners wishing to subdivide this property and I have also had conversations with both the Zoning and Planning Department, as well as Highway. I would ask the individual departments to maybe address the applicability of the new statutes that have gone in that allows the Board of Mayor and Aldermen some jurisdiction over, I believe it is the issuance of building permits on an unaccepted City street so there may be further implications of that recent statute that I am not as aware of. I concur I believe with where Alderman Lopez was going. Even though this is a constituent within my ward, we do not have enough resources in City Highway, specifically survey today to accomplish all of the needs and requests of all of the Aldermen dealing with City streets, parks, etc. I think I have Highway probably set-up for a few years in the future with projects. For us to start taking on private survey business into the business of the City because there is a dedication process and some engineering. In fact, an engineer has been hired by this particular land owner so for us to supplant with City services what should be done by an individual private surveyor is probably not the path we want to go in because we will be adding substantial staff and money to City departments if we continue to go and do what we did up on Mission Avenue. That was an exception to the rule and it is probably not a trend that we want to continue. With that being said, I would appreciate because I have advised these property owners to send a follow-up letter to see if there is applicability under the building permit process or some other process under the new statutes because it did alarm me when I heard that Zoning Board decision that it was going to be setting precedent for us as the Board

of Mayor and Aldermen to be asked to take on the duties of what I previously perceived to be a ZBA process. We might want to ask Building if it is applicable. I am not sure which of the two departments – Planning or Building but...

Mr. MacKenzie interjected I would just add in from the perspective of the subdivision is that most new streets in the City are built by developers through a process that Frank mentioned, which is actually the dedication process. If the City starts assuming some of those costs we may be asked in many other cases to start assuming costs for upgrading streets or quieting title or surveying for many situations.

Chairman O'Neil asked so your recommendation is the dedication process.

Mr. MacKenzie answered I would concur with Mr. Thomas that there are two ways to do it. Through a dedication process or layout process and that those processes should be followed.

Chairman O'Neil asked Leon do you have anything you would like to add to this discussion.

Mr. LaFreniere answered I don't know that I can really add very much other than to explain perhaps that there is some difference between this and the Mission Avenue situation on a couple of different levels. One is that there is a difference between the ZBA or Board of Mayor and Aldermen being asked for authorization to build on an existing lot of record that doesn't have street frontage and to create a new lot that doesn't have street frontage and in this case that was why the ZBA had to be involved. That two step process, one the creation of the lot and the second being the authorization to build on a lot without frontage. The authorization to build on a lot without frontage can be handled differently now since this new legislation went into effect in 2002 and that is why the Board of Mayor and Aldermen recently saw a request come to them for consideration under that area. The creation of the lot without street frontage would still require ZBA action. I don't know if I have confused things further but it is a two step process when you are creating a new lot.

Alderman Shea moved to use the dedication process and have the owner of the property be responsible for all expenditures involved. Alderman Lopez duly seconded the motion.

Chairman O'Neil asked do you have some concern about that Alderman DeVries.

Alderman DeVries stated my concern is I think this party may have already put in to motion what would be potentially the third process. If I am understanding Mr.

LaFreniere correctly, the ability to come back to the Board of Mayor and Aldermen as we saw last time for the first time asked for the building permit on an unaccepted City way. That goes with an education that I think Planning needs to weigh in with some considerations if there are safety issues but I think I may have initiated with them what I thought was a third option that they had. Leon correct me if I am incorrect because this is a new statute we are dealing with.

Mr. LaFreniere responded I don't have any knowledge that the Gelinas's have pursued asking the Board of Mayor and Aldermen yet for authorization to build on a lot without street frontage. The action that I am aware of is the request before you tonight, which was a separate and distinct request to petition for acceptance of a street and in that case that would eliminate any zoning non-compliances because it would then be a street. That is a little bit different than the other potential action to create a building on a lot without street frontage.

Alderman DeVries asked if there is new action that has come forward within the last few days from the Gelinas's to this Board and I didn't see a current dated letter, I thought it was a December 17 letter that was making this request but if something new has come forward I certainly have no issues and I think maybe we can go forward with both efforts and certainly if they don't wish to follow the dedication process that is their funds and they can stop that and have a conversation with the Building Department to see if they should be writing a letter.

Chairman O'Neil called for a vote on the motion to recommend that the dedication process be followed and that the owner be responsible for all expenses.

Chairman O'Neil addressed Item 7 of the agenda:

Petition for discontinuance of a portion of ROW at 466 So. Willow Street submitted by Frederick Nixon.

Mr. Thomas stated this is a petition for a discontinuance of South Willow Street. In particular, it is located at the intersection of South Willow Street and South Lincoln Street. There is an auto dealership there, Autotorium I believe is the name of the place. What we did in conjunction with the opening of the Shaw's Supermarket was to make that more of a right hand turn at that area of intersection in order to slow down traffic coming off of South Willow Street. Traffic was speeding because it was kind of a flat turn at that location. As such, there was more dead space created. The plan that is attached to our correspondence shows the area in particular that is being requested for discontinuance. We don't really have a concern with it, however, there are two issues that I would like to raise. Number one, before any discontinuance would take place, the parcel because it is the South Willow Street corridor and because federal monies were utilized for

improvements to South Willow Street we would most likely have an encroachment agreement which would require that the state sign-off on this. We have made that request and not heard back from them yet. Also, we did receive a copy of a correspondence from Bob MacKenzie of the Planning Department noting that this area may be considered for improvements as far as the streetscape in this area. I guess the request is a little premature based on our correspondence.

Chairman O'Neil asked Bob how did this particular corner get consideration for Plan NH.

Mr. MacKenzie answered recently the Mayor's Office asked me to actually submit to Plan NH for streetscape improvements along the entire corridor, which would include maybe widening of sidewalks in certain areas, tree planting and other improvements to make it a little bit more friendly including perhaps signage improvements. We had not really looked at this particular plan until today so I did put in a letter just providing you with information that there might because I would hate to come back maybe six months from now and say we have to widen the right-of-way here and the Board has already discontinued a portion of that. I do think a portion of it could be discontinued but it may be that we leave a little bit more room for sidewalk or trees in this area because it is actually a relatively narrow sidewalk and a relatively narrow right-of-way once South Willow was widened several years ago.

Chairman O'Neil asked by moving forward on this Plan NH project is that going to end up binding us into doing work down the road.

Mr. MacKenzie answered it in no way binds the City but I think the Mayor's Office is hoping that it gives us some good ideas to visually improve South Willow Street and make it a little more pedestrian friendly and a little bit safer.

Alderman Shea moved to table this item. Alderman Smith duly seconded the motion. Chairman O'Neil called for a vote. There being none opposed, the motion carried.

Chairman O'Neil addressed Item 8 of the agenda:

Communication from Leo Bernier, City Clerk, requesting the Committee recommend a transfer from contingency of \$7,313.00 to the Clerk's Office to cover the costs required for purchase of a Canon Filmer/Scanner Model DR5060F.

On motion of Alderman Shea, duly seconded by Alderman Lopez it was voted to approve the transfer of \$7,313 from contingency to the City Clerk's Office.

Chairman O'Neil addressed Item 9 of the agenda:

Communication from Robert MacKenzie, Planning Director, submitting a request of For Manchester to effect a change in purpose for the \$1,800.00 allocated in the 2005 CIP.

Alderman Smith moved to approve the request. Alderman O'Neil duly seconded the item for discussion.

Alderman Lopez stated I have a couple of questions. I called Mr. MacKenzie earlier today. Does FOR MANCHESTER have any money in their fund?

Mr. MacKenzie responded we understand there was \$3,600 total for that project. For this one, they had asked the City for \$1,800 and they were providing \$1,800 of their own funds towards the project. I would note that the implication is that we are recommending this change. I think staff felt that we could not change it ourselves, change for the purpose of a CIP project. We just wanted to make sure that it went to the right group, which is the CIP Committee. You have the ability to change from one purpose to another purpose.

Alderman Lopez stated apparently the request was for a beautification project so I imagine the beautification project is no longer correct. Has that been verified?

Sam Maranto, Planning Department, stated it is my understanding that they will continue to do that project. They are obtaining additional private donations to continue with that so that project will go on.

Alderman Lopez stated the problem I have with this is that in making this annual production report we will be giving money to non-profit organizations to do this and once we start this then other organizations are going to come back to the Board of Mayor for annual reports. The money was allocated or the request was for beautification. I would think that if they are going to do an annual report they could go out and get the money and have somebody put their John Henry down there as donating the services for that. It would be better than the City of Manchester having their name on it to do the annual report. I think we have to remember that as much as we appreciate everything that everybody does in the City that this non-profit organization was established to help the City and I think that we have helped them with beautification and things like that and we should do that but we shouldn't be doing the operational services of the organization. I just don't see any need to spend \$1,800 for that. If they don't need the money for beautification I am sure that we need the money. We are always scrounging for \$1 here or \$2 that we need in the City that we can use for our operation.

Alderman Shea stated so often I have mentioned that when we allocate money for a specific purpose and then there is a little bit of a change there is an unintended consequence that is going to result and I think that Alderman Lopez indicated what could result so I am going to make a motion that we deny this request.

Alderman Lopez duly seconded the motion.

Alderman Smith stated I believe that the project was a City garden project and part of the City garden project was a beautification project. They have the additional \$1,800 I believe in their budget right now am I correct?

Mr. Maranto responded I believe they will be fundraising for that.

Alderman Smith stated you as the CIP Division have agreed that this is appropriate.

Mr. MacKenzie responded we don't have a recommendation on this. Again, our concern was that we do not have the ability to change the purpose of a program. We were comfortable before with the fact that beautification was a public purpose that could be funded through CIP. I don't think we have yet reached that conclusion with what they are proposing now, which is more of a brochure.

Alderman Smith replied I am reading your letter here and it says it would be appropriate if the Committee so desires.

Mr. MacKenzie responded the Committee has the ability in terms of the technical process to change the purpose.

Chairman O'Neil stated I agree with Alderman Lopez that we funded for a project in the City and now if we start getting into funding annual reports and paying for annual meetings what door is that going to open.

Chairman O'Neil called for a vote on the motion to deny the request. The motion carried with Alderman Smith being duly recorded in opposition.

Chairman O'Neil addressed Item 10 of the agenda:

Discussion relating to the reinstitution of a housing rehabilitation program.

Deputy Clerk Normand noted that an additional communication from Mr. MacKenzie was handed out this evening.

Mr. MacKenzie stated this was a request that we would like to at least have a discussion with the Committee on a housing rehabilitation program. For a number of years the City did use federal funds to provide either grants or loans to people of low to moderate income to rehabilitate either their home or small multi-family buildings. Those programs were run for us normally by the MHRA and at other times by Neighborhood Housing Services. At the present time the last couple of years those agencies have declined to run a rehab program and yet we do get constant requests from individuals for small rehabilitation loans, again low and moderate income people for example to improve roofs, to put boilers in and just wanted to broach with the Committee whether you thought it would be a good idea for the City, perhaps even through our office, to offer loans in certain situations.

Chairman O'Neil asked Bob is that something we have the ability to do now or will it have to be for the next budget process.

Mr. MacKenzie answered there are federal funds called HOME funds that I think would be available to do this. Our staff is a little bit out straight for the next couple of months but if the Committee wanted us to do it we could probably gear up for later this spring. Again, we would want to seek the concurrence, hopefully unanimous concurrence, that that is what the Committee wanted to do. Other cities do this program. We did a little bit of research to see what other cities did and how many units a year they provided loans for and I think those have been handed out to you for your information.

Chairman O'Neil stated my question would be from a timing standpoint we are coming into...we are in the winter but are going to be soon into spring and by the time we actually got to this we would be approving a new CIP budget wouldn't we. Would that be a more appropriate time than trying to rush to get something done before the end of this fiscal year?

Mr. MacKenzie responded yes. I don't think we are trying to rush although we do have allocations of housing monies that could be used and maybe unexpended but again those HUD housing monies could roll over for a certain amount of time into next year. You can...we are not asking for a rush decision on this. You can wait for the budget process if you would like but it is likely that we would have some additional HUD HOME funds that we could use towards this program.

Chairman O'Neil asked and we would have to find an agency to...

Mr. MacKenzie interjected either an agency or if we could not find an agency because a couple have declined a consultant to work with the City to administer this.

Chairman O'Neil asked will the Committee just approve allowing them to go forward and take this to the next level.

Alderman Shea moved to allow the Planning Department to further research instituting a housing rehabilitation program and report back to the Committee at a later date. Alderman Lopez duly seconded the motion.

Alderman Lopez asked if there is no agency out there do you want to authorize the Planning Department...the Manchester Neighborhood Housing, would they be somebody that could handle this.

Mr. MacKenzie answered they have run a portion of the program in the past. It is a very nitty gritty program that takes a lot of time and they declined to do it again, at least the homeowner rehabilitation program, about two years ago. We would likely and we have contacted the Housing & Redevelopment Authority to see if they would be interested in doing it again. That would probably be our preference if we could find an agency to volunteer but we haven't done the program in a couple of years and we have continuous requests from residents to do it.

Alderman Lopez stated I think it is a good program and I would go along with the motion.

Chairman O'Neil called for a vote on the motion. There being none opposed, the motion carried.

Alderman DeVries stated I realize you have already passed that and I didn't want to interfere with the passing of that motion it was more of a comment because I know that I was contacted by one of the non-profits that also does in a very concentrated weekend or day of work, Rebuilding Together, and they were of assistance for myself, actually for a Ward 9 resident last year in doing some substantial rehabilitation. They are always looking for Manchester properties that are low income and in need of rehabilitation. If maybe somebody from the Planning Department would like to contact me and I will give you the names of the non-profit group and I am sure that if you would like to assist them in their fundraising utilizing any of those HOME funds that might help them to accomplish more homes in that one or two weeks of rehab that they do.

Chairman O'Neil addressed Item 11 of the agenda:

Discussion relating to long-range CIP planning.

Deputy Clerk Normand noted that an additional communication from Mr. MacKenzie was handed out this evening.

Mr. MacKenzie stated I guess I wanted to start the process of looking at the longer range capital needs of the City, which are significant. Again, this is not on the agenda so we are not expecting you to digest this information but I would perhaps appreciate it if at the next CIP meeting we could have a more detailed discussion on it. At the present time, the request and needs of the City exceed the roughly \$10 million a year of bonding that we have to do all of these projects. We will have to find a way to do these things, including MER to CSO separation to additional school improvements and our current bonding limitations really don't allow us to do it. I think it would be good if we could set aside maybe 15 minutes at the next meeting if you would to talk in more detail about some of these major projects and how we can shift things around to meet the needs of the different departments and the Aldermen.

Alderman Shea stated some of the projects that we have approved, are they ongoing like the Library and other projects such as that. Is that ongoing now?

Mr. MacKenzie responded this does not include the currently approved projects. The \$3.2 million set aside for the library renovations is not included here. The library does have some major requests in that you will see on this list - \$16 million for a new addition to the main library and up to \$5 million for the West Side branch. Those are new ones that the Board really hasn't heard about before and it would be good for the Board to start looking at these.

Alderman Shea asked this list is more of a wish list correct. People are wishing that somehow or other some philanthropic person might come along and contribute \$40 million or so and then we would be all set. I do welcome your 15 minutes of discussion if it were if that is acceptable to the Chairman.

Alderman Lopez asked on the Police Building Expansion didn't we take all of that money. Is that still on the books?

Mr. MacKenzie answered it is not on the books but it is requested again by the Police Department so it is a requested item.

On motion of Alderman Smith, duly seconded by Alderman Shea it was voted to place this item on the next CIP agenda.

TABLED ITEMS

12. Discussion of Parks, Recreation & Cemetery Master Plan.

On motion of Alderman Shea, duly seconded by Alderman Smith it was voted to remove this item from the table.

Chairman O'Neil stated there was a communication handed out this evening from Ron Ludwig. I think Mr. MacKenzie has a recommendation.

Mr. MacKenzie stated we would hope that they could select a consultant within the next couple of weeks before the next Board meeting. We do believe...we have determined that this is eligible for the federal CDBG funds. We are also aware of areas of funds where we could pay for the additional amount. There is a range, I think, from \$70,000 up to about \$95,000, which would be doable based upon the amount of federal funds that we would have. So perhaps the Committee, once they see the final recommendation, we believe we can find ways of being able to fund the full amount.

On motion of Alderman Smith, duly seconded by Alderman Lopez it was voted to have the Parks, Recreation & Cemetery Department choose a consultant for their Master Plan and bring the recommendation back to the CIP Committee.

13. Synthetic turf maintenance at Gill Stadium, West Memorial Field, and the Clem Lemire Sports Complex at Memorial High School and a list of additional capital items needed to properly operate Gill Stadium.

This item remained on the table.

There being no further business, on motion of Alderman Smith, duly seconded by Alderman Lopez, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee